IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 461 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAFULBHAI MANSANGH KOTICHA

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATY with MR TUSHAR MEHTA for Petitioner

MR BY MANKAD, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 08/11/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by Shri B.Y.Mankad, learned APP for the respondent.

2. The petitioner has, by filing this Criminal

Revision Application under Section 397 of Criminal Procedure Code, 1973 (In short `Cr.P.C.') challenged the legality, correctness and propriety of an order dated 21st October, 2000, passed by the learned Additional Sessions Judge, Rajkot (who will be referred to as `the learned Judge of the trial Court') below applications Exhs.8 and 15 submitted by PSI, R.R.Cell, Rajkot Region, Rajkot, in proceeding of Wankaner Taluka Police Station C.R.No. II - 3026 of 2000 in connection with offences punishable under Sec.3 - 7 of the Essential Commodities Act, 1955.

3. The facts leading to this Criminal Revision Application in a nutshell are as follows:

3.1 One FIR being C.R.No.II 3026 of 2000 is lodged in Wankaner Taluka Police Station for offences punishable under Sec.3 and 7 of the Essential Commodities Act, Section 9-B(AB) and Section 12 of the Explosives Act, Section 5 of Explosive Substances Act and Section 120-B of the Indian Penal Code. That FIR appears to have been lodged against four accused persons, out of which, none of them is present petitioner, on or about 28th April, 2000. It is the case of the petitioner that said case has been investigated by the police and ultimately a charge-sheet has been filed in the Court of the learned Judge of the trial Court, and in that charge-sheet the name of the petitioner is cited as one of the accused.

3.2 Before Investigating Officer could arrest the revision-petitioner, he moved this Court by filing a Criminal Misc. Appln. No.3249 of 2000. In that proceedings, this Court (Coram:M.S.Parikh, J.) passed an order dated 16th August, 2000, directing the present petitioner to appear before the learned Judge of the trial Court where the chargesheet is filed. By that order, the petitioner was directed to move appropriate application for bail before the said court before which he will appear. Pursuant to that order, the petitioner appeared before the learned Judge of the trial Court and filed a bail application under Sec.439 of Cr.P.C. As per statement made by Learned Sr.Advocate Shri N.D.Nanavaty that bail application preferred by the petitioner is pending and is required to be decided on merits. That bail application being Criminal Misc. Appln. No.1158 of 2000 is pending before the trial Court.

3.3 During the pendency of this bail application, as it appears, the Investigating Officer submitted applications Exh.8 as well as Exh.15 requesting the learned Judge of the trial Court to entrust the custody

of this petitioner in police custody to him. That two applications Exh.8 and Exh.15 were heard together and the learned Judge of the trial Court decided that two applications by common order dated 21st October, 2000. By that order, the applications given by Investigating Officer came to be dismissed, but, simultaneously the learned Judge of the trial Court passed an order to issue Non-bailable warrant against one accused Hitesh alias Jago Chandulal Khokar (petitioner of Criminal Revision Application No.467 of 2000). For present petitioner, the learned Judge of the trial Court ordered to take him in judicial custody. From record it appears that he is in jail custody under Prevention of Black Marketing Act.

3.4 Being aggrieved against and dissatisfied with the said order, this Criminal Revision Application is filed by the revision-petitioner.

4. Heard Shri N.D.Nanavaty, learned Sr.Advocate for the petitioner and Shri B.Y.Mankad, learned APP for the respondent.

5. Shri Nanavaty, learned Senior Advocate has produced a copy of oral order dated 1st November, 2000, passed in Criminal Misc. Appln.No.6274 of 2000 passed by this Court (Coram: A.L.Dave, J.). That application was moved by one Bhupenbhai M. Shah who is also one of the accused in that very case. The facts and circumstances of that application were exactly similar to that of this case. That order passed in Criminal Misc. Appln.No.6274 of 2000 is taken into consideration by this Court, while passing this order.

6. During the course of arguments, the learned advocates for both the parties jointly submitted that this application be disposed of by giving suitable directions to the learned Judge of the trial Court without assigning any reasons in the judgment.

7. Having heard the learned advocates for both the parties and on going through the order challenged in this application and grounds stated in memo of this revision, this Court is of the view that this application requires to be disposed of by giving suitable directions to the learned Judge of the trial Court.

8. In view of what is stated hereinabove, this Criminal Revision Application deserves to be allowed. An order challenged in this Criminal Revision Application is set aside.

9. The learned Judge of the trial Court is directed to decide and dispose of bail application bearing Criminal Misc. Appln. No.1158 of 2000 in accordance with law, strictly on merits, by affording full opportunity of being heard, to both the parties including Investigating Officer of the case, as early as possible, preferably on or before 16th November, 2000.

9.1 In case, if aforesaid bail application filed by revision-petitioner is not finally decided and disposed of on or before 18th November, 2000, then petitioner may submit his application on line of Exh.69 and the learned Judge of the trial Court will take a suitable judicial decision on that application.

In view of this, this Criminal Revision Application stands disposed of. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

(H.H. Mehta, J.)

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